

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



V

**Reach for the Clouds Inc.**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:42 I/II employer/employee relationship

**Employer:** Reach For The Clouds, Inc., 1 Tara Blvd, Nashua, NH 03060

**Date of Hearing:** April 7, 2015

**Case No.:** 49590

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts he is owed \$3,323.52 in unpaid salary as he worked two weeks and two days. He received a biweekly salary of \$3,000.00. On December 16, 2014, the employer asked him to leave.

Reach for the Clouds Inc. denies the claimant was an employee. They argue he was a "de facto" principal of Sublime Enterprises Inc., with which they were in talks to acquire. The claimant's wife is the principal of Sublime Enterprises Inc.

Acquisition talks began in October 2014. The claimant continued to work for Sublime Enterprises Inc. After a complete review of the financials, Reach for the Clouds Inc. determined they would not pursue the company further.

Any services performed by the claimant were to further the possibility of the sale.

**FINDINGS OF FACT**

This Department must first to determine whether the claimant was an employee or an independent contractor. RSA 275:42 II defines "employee" as, "means and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281-A:2, VI(b)(2), (3), or (4), or RSA 281-A:2, VII(b), or a person providing services as part of a residential placement for individuals with developmental, acquired, or emotional disabilities, or any person who meets all of the following criteria:

- (a) The person possesses or has applied for a federal employer identification

number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer.

(c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to completion schedule, range of work hours, and maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(d) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.

(e) The person holds himself or herself out to be in business for himself or herself or is registered with the state as a business and the person has continuing or recurring business liabilities or obligations.

(f) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(g) The person is not required to work exclusively for the employer.

An employer is defined in RSA 275:42 I as any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, employing any person, except employers of domestic labor in the home of the employer, or farm labor where less than 5 persons are employed.

Reach for the Clouds Inc.'s argument that the claimant had been working on behalf of Sublime Enterprises Inc. to further the sale is not persuasive. They treated the claimant as an employee. He was not a principal of Sublime Enterprises Inc., but an employee of that entity. Nothing in the statute precludes an employee for working for more than one employer.

Reach for the Clouds Inc. provided the claimant with an email address, phone number and title within their employ, documentation previously submitted.

The claimant previously submitted credible documentation in the form of emails showing solicitations and work performed on Reach for the Clouds Inc.'s email system, for the benefit of the employer.

Reach for the Clouds Inc. placed the claimant on the health insurance coverage effective December 1, 2014, along with at least one other new employee, documentation previously submitted.

The Hearing Officer finds the claimant was an employee of Reach for the Clouds Inc. (hereafter "the employer") as he was permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment. The exceptions contained within the statute do not apply to this case, nor were they raised at the hearing.

The claimant provided credible testimony and documentation that he worked for the employer from December 1, 2014 through December 16, 2014, when the employer terminated his employment.

The claimant credibly testified that the parties agreed to an annual salary of \$72,000.00 payable at \$3,000.00 per biweekly pay period.

**DECISION AND ORDER**

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds that the claimant proved by a preponderance of the evidence that he is owed the claimed wages, it is hereby ruled that the Wage Claim is valid in the amount of \$3,323.52.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$3,323.52, less any applicable taxes, within 20 days of the date of this Order.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: April 17, 2015

MJD/kdc